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**Application for Admission Pro Hac Vice forthcoming*

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD PARTAL II, KRISTINE
MARIE PARTAL, AND ELLEN
PARTAL

Plaintiffs,

v.

DAVID Y. IGE, in his official capacity
as Governor of the State of Hawaii;
STATE OF HAWAII; MAYOR
HARRY KIM, in his official capacity as
the Mayor of Hawaii County; and John
and/or Jane Does 1-10, in either official
or individual capacities

Defendants.

CIVIL NO.
Other Civil Action

**Complaint for Declaratory and
Injunctive Relief; Summons**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Richard Partal II, Kristine Marie Partal and Ellen Partal, by and through their undersigned attorneys, allege as follows:

1. Plaintiffs Richard Partal II (“Richard Partal”), Kristine Marie Partal (“Kristine Partal”) (Kristine Partal and Richard Partal hereinafter collectively referred to as the “Partals”); and Ellen Partal (“Ellen Partal”) (collectively, “Plaintiffs”), by their undersigned counsel, file this Complaint for Declaratory and Injunctive Relief against David Ige in his official capacity as the Governor of the State of Hawaii (“Gov. Ige”) and Mayor Harry Kim in his official capacity as the Mayor of the County of Hawaii (“Mayor Kim”). Plaintiffs aver as follows:

PARTIES

2. Plaintiff Richard Partal is an adult resident of the State of Hawaii (who together with his wife Plaintiff Kristine Partal are the co-owners of a town home condominium in the County of Hawaii) and is a United States citizen.

3. Plaintiff Kristine Partal is an adult resident of the State of Hawaii (who together with her husband Plaintiff Richard Partal are the co-owners of a town home condominium in the County of Hawaii) and is a United States citizen.

4. Plaintiff Ellen Partal is an adult resident of the State of Hawaii, and is a United States citizen.

5. Gov. Ige is sued in his official capacity as the Governor of the State of Hawaii. In his capacity as Governor, Gov. Ige is responsible for enforcing Hawaii emergency powers laws and has authority to proclaim a state of emergency under the provisions of Hawaii Revised Statutes Chapter 127A.

6. Mayor Kim is and at all times relevant hereto was the Mayor of the County of Hawaii; and is sued in his official capacity as the Mayor of Hawaii County of the State of Hawaii pursuant to which capacity he is responsible for enforcing Gov. Ige's emergency orders within the County of Hawaii, and as the Mayor of Hawaii County has acted to implement Gov. Ige's emergency orders.

JURISDICTION AND VENUE

7. This action seeks declaratory, injunctive, and other relief pursuant to Hawaii Revised Statutes Section §127A-27 and § 603-21.5, 632-1.

8. Venue is proper pursuant to HRS § 603-36.

9. There is an active, justiciable controversy between the parties over whether Gov. Ige's exercise of emergency powers under HRS Chapter 127A has violated the maximum sixty day period prior to automatic termination as provided by HRS 127A-14(d), and therefore all emergency power orders or proclamations issued after May 3, 2020 are facially invalid and as to Plaintiffs cannot be enforced against them.

10. Declaratory relief will resolve this controversy and eliminate the burden imposed on Plaintiffs.

11. A preliminary injunction against Gov. Ige from violating Plaintiffs' rights will shield Plaintiffs from ongoing harm while this litigation is pending.

12. A permanent injunction against Gov. Ige preventing him from violating Plaintiffs' rights, and the rights of others similarly situated, will protect Plaintiffs' rights (and the rights of others similarly situated) prospectively after final resolution of this matter.

FACTUAL ALLEGATIONS REGARDING GOV. IGE

13. On March 4, 2020, Gov. Ige issued an Emergency Proclamation for the entire State of Hawaii which Gov. Ige based on his determination that the conditions in Hawaii were of such character and magnitude to constitute an emergency or disaster as contemplated by Hawaii Revised Statutes Sections 127A-2 and 127A-14, and on that basis Gov. Ige "declare[d] that the disaster emergency relief period shall commence immediately and continue through April 29, 2020, or by a separate proclamation, whichever occurs first."

14. Hawaii Revised Statutes Section 127A-14(d) specifically provides that:

"[a] state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first."

15. The April 29, 2020 ending date of Gov. Ige's March 4, 2020 Emergency Proclamation fit precisely within the 59-day maximum life for the proclamation as provided in HRS 127A-14(d), cited by Gov. Ige in his Emergency Proclamation dated March 4, 2020.

16. In his March 4, 2020 Emergency Proclamation, Gov. Ige undertook legislative law-making powers granted by Chapter 127A; he suspended operation of a long list of existing statutes; he authorized the expenditure of state monies as appropriated for the speedy and efficient protection and relief of the damages, losses, and suffering resulting from the emergency; and activated the Major Disaster Fund.

17. Approximately two weeks later, on March 16, 2020, Gov. Ige issued a Supplementary Proclamation (incorporating by reference all the prior proclamations), unlawfully extending the state of emergency beyond May 3, 2020, the permitted 59th day, to continue through May 15, 2020.

18. The Supplementary Proclamation unlawfully extended the original orders beyond the lawful 59 days, added additional restrictions and requirements to the original Proclamation; and suspended additional laws related to open public agency meetings and record, administrative procedures, information practices.

19. Gov. Ige issued on March 21, 2020, his Second Supplementary Proclamation ordering (incorporating by reference all the prior proclamations),

without any public or legislative input, a mandatory 14-day quarantine of all persons entering the State of Hawaii effective March 26, 2020, and carrying a criminal penalty of up to \$5,000 fine and one-year imprisonment.

20. Without the benefit of any public input under the Administrative Procedures Act, Gov. Ige adopted Rules Relating to Covid-19 containing the same quarantine requirement and criminal penalties for a violation.

21. The Second Supplementary Proclamation also unlawfully extended its cumulative orders to May 20, 2020, well beyond the 59th day of May 3, 2020.

22. Two days after issuing his Second Supplementary Proclamation, Gov. Ige issued his Third Supplementary Proclamation on March 23, 2020, which (while incorporating all the prior Proclamations) among other things, pulled back the continuation of the emergency period from the unlawful May 20, 2020 expiration date, to April 30, 2020, which was well within the May 3, 2020 lawful 59th day pursuant to HRS Section 127A-14(d).

23. The Third Supplementary Proclamation ordered all persons within the State of Hawaii to comply with additional limitations on liberty until the April 30, 2020 expiration.

24. On March 31, 2020, Gov. Ige issued his Fourth Supplementary Proclamation (incorporating by reference all the prior proclamations), again lasting

until April 30, 2020, ordering inter-island travel mandatory quarantine with the same criminal penalties of up to a year in prison and/or a fine of up to \$5,000.

25. On April 16, 2020, Gov. Ige issued his Fifth Supplementary Proclamation, incorporating the prior proclamations and declaring that the emergency period extended no further than April 30, 2020, again within the 59 days permitted by HRS 127A-14(d).

26. This Fifth Supplementary Proclamation prohibited additional activities regularly engaged in by the citizens in Hawaii; and provided like previously that a violation carried a fine of up to \$5,000 and/or incarceration of up to one year in prison.

27. On April 25, 2020, Gov. Ige issued his Sixth Supplementary Proclamation (incorporating by reference all the prior proclamations), which, among other things, ordered mandatory quarantine for interstate and inter-island travel; suspended laws from operation; and reiterated the criminal penalties of a maximum one year in prison and/or a fine of up to \$5,000.

28. The Sixth Supplementary Proclamation issued Administrative Rules governing Travel Quarantine, Child Care Services, and Notaries Public, all without the benefit of any of the public protections provided by the Administrative Procedures Act; it also unlawfully ordered the effective date of the orders

contained therein to extend to May 31, 2020, well beyond the 59th day of May 3, 2020.

29. After the Emergency Proclamation automatically terminated on May 3, 2020 pursuant to HRS 127A-14(d), on May 5, 2020, Gov. Ige issued his Seventh Supplementary Proclamation (incorporating the prior proclamations), which was unlawfully ordered to be effective until May 31, 2020.

30. The Seventh Supplementary Proclamation, unlawful in every respect, continued Gov. Ige's prior orders notwithstanding the automatic termination of his emergency powers; reiterated the mandatory quarantine travel restrictions for interstate and inter-island travel; suspended a host of laws.

31. After the Emergency Proclamation terminated by operation of law on May 3, 2020 pursuant to HRS 127A-14(d), on May 18, 2020, Gov. Ige issued his Eighth Supplementary Proclamation (incorporating the prior proclamations), which he calls "Act with Care" but which was unlawfully ordered to be effective until June 30, 2020, nearly 60 days beyond the original statutory 60 day permitted exercise of emergency powers.

32. The Eighth Supplementary Proclamation is unlawful in every respect including the quarantine required of every person who travels inter-island and interstate; and continued all the other prohibitions, requirements, regulations, suspensions of laws, and criminal penalties of the prior proclamations.

33. After the Emergency Proclamation terminated by operation of law on May 3, 2020 pursuant to HRS 127A-14(d), on June 10, 2020, Gov. Ige issued his Ninth Supplementary Proclamation (incorporating the prior proclamations), which is the version of his emergency orders that Plaintiffs have been harmed by; Gov. Ige unlawfully ordered the Ninth Supplementary Proclamation to be effective until July 31, 2020, nearly 90 days beyond the original statutory 60 day permitted exercise of emergency powers.

34. Gov. Ige's Ninth Supplementary Proclamation deviates from and actually abandons the statutory bases permitting emergency proclamations found in HRS Chapter 127A; his Ninth Supplementary Proclamation states:

"WHEREAS, as of June 10, 2020, there have been 685 documented cases of COVID-19 in the State and 17 deaths attributed to this disease;

WHEREAS, COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert unmanageable strains on our healthcare system and other catastrophic impacts to the State;

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawaii, hereby amend and restate all prior proclamations and executive orders, and authorize and invoke the following as set forth herein:"

35. In addition, the Ninth Supplementary Proclamation suspends HRS Section 27A-14(b) but not the automatic termination provisions of HRS Section 127A-4(d).

36. The Ninth Supplementary Proclamation, unlawful in every respect, continued the mandatory 14-day quarantine for people involved in interstate travel such as Plaintiffs, if not exempted from the obligation; and continued all the other prohibitions, requirements, regulations, suspensions of laws, and criminal penalties of the prior proclamations.

37. The Ninth Supplementary Proclamation also conscripts and mandates individuals who suspect others of violating the quarantine, to report the suspected quarantine violators to law enforcement immediately; and furthermore provides that it is a misdemeanor to fail in this reporting obligation, subjecting the person to imprisonment up to one year and/or a fine of up to \$5,000.

38. The Ninth Supplementary Proclamation permitted the operation of businesses or operations that are part of the federal critical infrastructure sectors.

39. Mayor Kim enforces Gov. Ige's unlawful orders on the Island of Hawaii.

FACTS REGARDING PLAINTIFFS

40. The Partals live in Kona on the island and in the County of Hawaii, State of Hawaii and are the fee owners of a town home condominium on the Island

of Hawaii, located in Waikoloa Village, Hawaii (hereinafter referred to as the “Town Home”).

41. The Partals decided in 2020 to relocate back to the State of Hawaii and, with Ellen Partal, reside in the Town Home. In the process of accomplishing that move, Richard Partal returned to Hawaii County in late April and early May during the Covid-19 emergency and observed the quarantine.

42. Later in May, 2020, Richard Partal made arrangements to return to Hawaii, after performing improvements and reinforcements for Interstate 405 freeway in Oregon as an exempt critical infrastructure employee. Part of those arrangements to return to Hawaii included contacting the DOD Covid Exemption office in the Hawaii government, which on May 28, 2020 emailed Richard Partal a written total exemption from the self-quarantine requirements upon his arrival May 30, 2020, including authority to rent a vehicle; and instructions to present a copy of the email to airport screeners.

43. Richard Partal returned to Hawaii on May 30, 2020 and remained there until he had to return to Oregon two weeks later, in mid-June. When preparing for another return to Hawaii in July 2020, Richard Partal contacted the same DOD Covid Exemption office in Hawaii. When Richard Partal returned to Hawaii on July 6, 2020, he showed the exemption letter to the airport screener who

informed him his exemption was still effective, and the screener marked the exempt section of Richard Partal's Mandatory Travel Declaration Form.

44. On July 6, 2020, when Richard Partal left the airport, he was exempt from the mandatory self-quarantine requirements as he had been on May 30, 2020.

45. On July 7, 2020, Richard and Kristine Partal's two-year old son (hereinafter referred to as "Baby Partal"), accompanied Kristine Partal and Ellen Partal from Oregon to Hawaii to complete the family relocation.

46. At the airport, both Kristine Partal and Ellen Partal were given instructions for self-quarantine; Baby Partal was not instructed to quarantine, nor was he included on any of the paperwork by name or other reference.

47. Richard Partal, Kristine Partal, Ellen Partal and Baby Partal all resided together in the Town Home.

48. On July 8, 2020, Richard Partal, not subject to the quarantine, took Baby Partal, also not subject to the quarantine, to the swimming pool in the common area of the Town Home to give the little boy some entertainment.

49. The resident manager of the complex which included the Town Home and the swimming pool called the police to report the violation of quarantine as required by Gov. Ige's Ninth Supplementary Proclamation.

50. On or about July 10, 2020, Richard Partal received a telephone call from Mayor Kim's civil defense office and was told that due to the report of him

having been in the common area of the Town Home, his quarantine exemption was revoked and he too was subject to quarantine with his wife, mother and son; that they had to social distance inside of the Town Home; and that consequently he and his wife, Kristine Partal, were not permitted to share a bed during the quarantine.

51. Richard Partal notified his employer that based on the revocation of his quarantine exemption he could not work until after July 21, 2020 so would not be able to appear for work until then.

52. As a result, Richard Partal has lost nearly two weeks of wages from work.

53. On Saturday, July 11, 2020, at approximately 12:30 pm, two police officers from the police force on the Island of Hawaii under the authority of Mayor Kim knocked on the Town Home door and presented Richard with photographs of him, Baby Partal and his mother, Ellen Partal, at the pool of the Town Home common elements.

54. Ellen had been told at the airport by the authorities not to go out of the town home complex into the public during her quarantine and she was honoring that by staying within the town home complex by being at the swimming pool area.

55. The police officers presented Ellen Partal and Richard Partal with separate documents entitled State of Hawaii Citation for Traffic Crime(s) Arrest in the District Court of the Third Circuit.

56. The police officer ordered Richard Partal to self-quarantine until July 21, 2020, which exceeds the 14-day quarantine he would have been subject to quarantine had he not been exempt upon arrival July 6, 2020.

57. Richard Partal was given Citation No. 3DTC-20-072316 notifying him that he was accused of violating HRS 127A-9 by engaging in prohibited acts; and Ellen Partal was given Citation No. 3DTC-20-072405 notifying her that she was accused of violating HRS 127A-9 for engaging in prohibited acts (the “Citations”).

58. Richard Partal and Ellen Partal now face misdemeanor charges which carry a maximum term of imprisonment of one year and a maximum fine of \$5,000.

**FIRST CLAIM FOR RELIEF:
GOV. IGE’S SEVENTH, EIGHTH, AND NINTH SUPPLEMENTARY
PROCLAMATIONS ISSUED PURSUANT TO HRS SECTION 127A-14(d)
ARE FACIALLY INVALID AND UNENFORCEABLE**

59. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

60. HRS Section 1127A-14(d) expressly provides:

(d) A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first.

61. Gov. Ige issued his initial proclamation of a state of emergency on March 4, 2020.

62. The issuance of that proclamation of a state of emergency transferred all of the law-making powers reserved to the legislature in the Hawaii Constitution, to Gov. Ige, but only for 59 days.

63. In addition, during that 59-day period, Gov. Ige exercised his emergency powers to suspend laws, including rights of citizens to participate in the lawmaking process.

64. During that time, the legislature is expected to prepare for the return to it of the constitutional law-making power automatically upon the termination of the powers extended to Gov. Ige on the 60th day.

65. Pursuant to HRS Section 127A-14(d), all of the emergency powers that were temporarily transferred to Gov. Ige automatically terminated on May 3, 2020.

66. The April 25, 2020 Sixth Supplementary Proclamation that by its terms expired on May 31, 2020, terminated on May 3, 2020.

67. From and after May 3, 2020, all of the orders previously issued by Gov. Ige, and any orders previously issued by the various mayors in Hawaii pursuant to Gov. Ige's orders, dissolved and were no longer of any force or effect.

68. From and after May 3, 2020, Gov. Ige no longer lawfully possessed any emergency power derived from HRS Chapter 127A and therefore, all of the orders contained in Gov. Ige's Seventh, Eighth and Ninth Supplementary Proclamations were null and void *ab initio*.

69. The quarantine orders and misdemeanor status for violating the quarantine order also terminated May 3, 2020.

70. Mayor Kim's enforcement of Gov. Ige's Seventh, Eighth and Ninth Supplementary Proclamations were null and void *ab initio*.

71. Based on this unlawful conduct by Gov. Ige and Mayor Kim, Plaintiffs have been injured and will continue to be injured.

72. Unless enjoined, Gov. Ige and all of the mayors in Hawaii will continue to act under color of state law to deprive Plaintiffs of their right to be free from the unlawful enforcement against them of previously expired orders.

73. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their rights unless Gov. Ige and Mayor Kim are enjoined from implementing and enforcing the emergency orders.

74. Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating, and restraining enforcement of Gov. Ige's emergency orders.

75. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees.

**SECOND CLAIM FOR RELIEF:
AS APPLIED TO PLAINTIFFS, GOV. IGE'S AND MAYOR KIM'S
EXERCISE OF EMERGENCY POWERS PURSUANT TO HRS SECTION
127A-14(d) IS UNLAWFUL**

76. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

77. Ordering Kristine Partal and Ellen Partal to quarantine after the automatic termination of Gov. Ige's powers to issue emergency orders after May 3, 2020 was unlawful as applied to them.

78. The acts by civil defense to revoke Ricard Partal's quarantine exemption and the unlawful issuance to Richard Partal and Ellen Partal of the Citations on July 11, 2020, based upon the previously automatically-terminated emergency orders is unlawful as applied to Richard Partal and Ellen Partal.

79. The unlawful enforcement against Richard Partal prohibited him from leaving the Town Home to attend his employment which deprived him of income due to his inability to perform the duties of his employment; the unlawful citing of Richard Partal and Ellen Partal for violating the previously automatically

terminated orders has unlawfully subjected them to criminal charges, trial, potential conviction and potential sentencing.

80. Gov. Ige's continued exercise of emergency powers after May 3, 2020, and Mayor Kim's enforcement of the same including the unlawful subjection of Plaintiffs to quarantine, constituted a usurpation of Plaintiffs' rights

81. Gov. Ige's unlawful exercise of emergency powers after May 3, 2020, and Mayor Kim's enforcement of the same continue to subject Richard Partal and Ellen Partal to criminal process with an arraignment on September 15, 2020; Richard Partal and Ellen Partal have been unlawfully injured and will continue to be injured.

82. Unless enjoined, Gov. Ige and Mayor Kim will continue to act under color of state law to unlawfully deprive Plaintiffs of their rights.

83. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their rights unless Gov. Ige and Mayor Kim are enjoined from the unlawful actions.

84. Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating, and restraining enforcement of, Gov. Ige's unlawful emergency orders.

85. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees.

**THIRD CLAIM FOR RELIEF:
PRIVATE ATTORNEY GENERAL DOCTRINE**

86. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

87. In proceeding with this litigation, Plaintiffs are vindicating important public rights, such that they are entitled to recover their attorneys' fees pursuant to the Private Attorney General Doctrine (separate and apart from any other statute or rule pursuant to which they are entitled to recover their attorneys' fees).

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Gov. Ige and Mayor Kim as follows:

A. An order and judgment declaring that Gov. Ige's Seventh, Eighth, and Ninth Supplementary Proclamations are facially and as-applied to Plaintiffs unlawful pursuant to HRS 127A-14(d);

B. An order temporarily, preliminarily, and permanently enjoining and prohibiting Gov. Ige and Mayor Kim from issuing further emergency orders in any manner inconsistent with HRS 127A-14(d), enforcing the existing emergency

orders facially or as applied to Plaintiffs; or otherwise interfering with Plaintiffs' constitutional rights and liberties;

C. An order and judgment declaring that Mayor Kim's enforcement of the unlawful orders is itself unlawful;

D. For attorneys' fees and costs pursuant to all legal bases for such fees and costs including pursuant to the Private Attorney General Doctrine, as may apply;

E. Such other and further relief as the Court deems appropriate and just.

Date: July 17, 2020

/s/ JAMES HOCHBERG, ESQ.

James Hochberg, Esq.

DHILLON LAW GROUP, INC.

Harmeet K. Dhillon, Esq.*

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*(Application for Admission pro hac vice forthcoming)